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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Applications for Consent to the	)	
Transfer of Control of Licenses of	)	
	)	
MediaOne Group, Inc.,	)	CS Docket No. 99-251
Transferor	)	
	)	
To	)	
	)	
AT&T Corp.,	)	
Transferee	)	

DECLARATION OF NANCY MCGEE

1. My name is Nancy McGee. I am Vice President – Digital Telephone Services Marketing at MediaOne Group, Inc. ("MediaOne"). I am responsible for product development and management for MediaOne's efforts to provide telephony services in the United States.

2. I am submitting this declaration in support of the pending application for FCC approval of the various license transfers associated with the merger of AT&T Corp. ("AT&T") and MediaOne. The purpose of my affidavit is to respond to claims by incumbent local telephone monopolists ("ILECs") that the merger will not help MediaOne compete with these ILECs. As I explain below, the combination of AT&T's and MediaOne's complementary assets will allow the combined entity to compete far more effectively with the dominant ILECs than either company could acting alone.

3. MediaOne is the third largest cable company in the United States. At the end of 1998, MediaOne's domestic cable television systems passed approximately 8.5 million homes and provided service to approximately 5 million subscribers. MediaOne is spending billions of dollars to upgrade its traditional, one-way analog cable systems to two-way, digital, high capacity broadband facilities capable of providing local telephony and other services.

4. In 1998, MediaOne began offering facilities-based local telephone service in six of its markets – Atlanta, Georgia, Los Angeles, California, Jacksonville and Pompano, Florida, Boston, Massachusetts, and Richmond, Virginia. Pursuant to our plans prior to the merger with AT&T, MediaOne also has launched local telephone service in Detroit, Michigan, this year and continues to plan a St. Paul, Minnesota, launch shortly if we are able to obtain necessary interconnection arrangements with U S WEST. MediaOne offers local telephone service to customers at rates well below comparable services offered by the incumbent LEC providers in each area where we provide telephone service. For specific details, please refer to the attached chart, depicting MediaOne and ILEC rates for comparable services.

5. Notwithstanding aggressive marketing efforts, MediaOne's telephony penetration rate, more than a year after launch, is less than 3% across all of the markets where we offer service. This means that even in homes ready for its circuit

switched cable telephony, just about three out of every 100 of MediaOne's potential customers subscribed to its telephone service.

6. The merger with AT&T will result in much faster and more effective deployment of MediaOne's upgraded assets and will allow AT&T and MediaOne to achieve local telephony penetration rates more commensurate with our investment and progress in upgrading our cable systems. MediaOne has faced a number of obstacles to entering and penetrating the local telephony market to a level that could create meaningful competition to the incumbent LECs. Many of these obstacles can be overcome by the merger with AT&T and the complementary nature of MediaOne's and AT&T's assets and expertise.

7. Because local telephone service is considered a "lifeline" service by most people, consumers generally want to receive service from an established telephone company. A new entrant without an established reputation as a provider of telephone services has a particularly difficult time convincing customers to switch. MediaOne's experience has confirmed that even a well-established and respected cable company such as MediaOne faces significant difficulty in generating consumer confidence as a provider of telephone services. One key reason that customers are reluctant to switch from their current provider to MediaOne for telephone service is skepticism that a "cable company" can provide top-grade service. Evidence that RBOCs do not consider MediaOne to be a significant competitive threat can be found in BellSouth's decision to *raise* its prices following MediaOne's launch of telephone service in Atlanta. BellSouth

raised its price for one residential line with a full feature set despite MediaOne undercutting its original rate by a substantial amount. That behavior stands in sharp contrast to SBC's reaction to AT&T's offering in Fremont, California, where SBC has announced it will provide a full voice, video, and data service offering to compete with AT&T's.

8. Consumers view telephone companies as having a greater reputation for quality and service than cable companies. For example, a recent survey conducted by the Yankee Group disclosed that the number of customers rating long distance company service as excellent was more than twice as high as their rating of cable television service. As between AT&T and MediaOne, surveys have shown that AT&T has a much stronger brand image, including a higher quality and service rating, and is considered more of a leader in the market for telephone services. MediaOne has conducted research that disclosed that a significant percentage of customers would purchase telephony services from AT&T who would not do so from MediaOne as a standalone provider. Thus, through the merger, MediaOne will immediately benefit from AT&T's strong telephony brand, and AT&T and MediaOne can use MediaOne's local network to enable AT&T to provide facilities-based local telephone service without the delays and pitfalls that could arise from AT&T's designing and constructing such a local network from scratch.

9. AT&T also has extensive technical and engineering expertise in the telephone industry, as well as telephone marketing and customer care expertise, from

which MediaOne's telephony efforts can benefit. Through the merger, MediaOne will gain AT&T's expertise in managing sophisticated telephone networks, and access to AT&T's highly sophisticated marketing and customer care organizational structures, which are capable of quickly responding to customer demands on a large-scale basis. Here, it is important to recognize that complex customer care is a much bigger part of the telephone business than of the cable business. MediaOne is in the process of implementing the large scale operational support systems that will be necessary to provide the best possible services to customers in competition with incumbent LECs. However, deployment of these systems is expensive and very time consuming before they can be fully operational and personnel can become proficient in their use. The merger will immediately enhance MediaOne's telephony offerings by combining MediaOne's upgraded cable facilities with AT&T's brand, expertise, and customer care capabilities in telephony.

10. Standing alone, MediaOne's business plan projects only a modest local telephony penetration rate in the coming years, one which will not unseat the ILECs from their current dominant position. With the merger, in contrast, the combined AT&T/MediaOne can be competitive much more quickly and far more broadly than either could alone and can in short order pose a serious competitive threat to dominant ILECs.

11. AT&T's experience and resources will also provide important benefits in the critical area of negotiating – and litigating – with the recalcitrant incumbent LECs with whom MediaOne must interconnect so that its customers will

have any-to-any calling capability. As MediaOne has explained to the Commission on numerous occasions, MediaOne's efforts to penetrate local telephone markets continue to be enormously frustrated by the ILECs. Problems have arisen in the areas of interconnection, number portability, access to new telephone numbers, access to wiring in multiple dwelling units, and access to ancillary services, such as directory assistance, support services, repair, and intraLATA toll service. For example, Pacific Bell and Bell Atlantic have refused to honor their interconnection agreements with MediaOne, thereby impeding MediaOne's access to crucial unbundled network elements. Certain ILECs have failed to promptly install trunking additions, causing severe service disruptions. Others have refused to provide message testing or signaling parameters, limiting the services MediaOne can offer. These difficulties directly hurt consumers, who receive lower quality and fewer features, and pay higher prices for local telephone service. AT&T's extensive experience in dealing with the RBOCs and others in these areas, as well as AT&T's considerable presence and resources in the telecommunications industry, will significantly bolster MediaOne's efforts in dealing and competing with the ILECs.

12. The merger also promises specific technological and architectural efficiencies. For example, MediaOne currently sends and receives traffic to and from AT&T primarily through ILEC tandem switches. After the merger, however, AT&T's extensive network infrastructure can be utilized to reduce MediaOne's dependency on the ILECs' infrastructure. Both companies also currently have development efforts underway with respect to future voice service platforms such as voice over IP. The

merger will be beneficial in that it will allow for a combination of resources and ideas in these promising new areas.

13. Finally, MediaOne brings much more to the table than its cable facilities, and MediaOne's experience and expertise should also make AT&T a more effective local telephony competitor in those areas that were formerly operated by TCI where AT&T is currently upgrading to two-way broadband capability. MediaOne has already upgraded half its cable systems, and has established local telephone networks in seven areas. AT&T will benefit from MediaOne's real world experience in using cable facilities to provide local telephone service, including our experience with the training and equipment required to install and maintain equipment at the customer's location.

VERIFICATION

I, Nancy McGee, declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15, 1999.

Nancy McGee

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
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Applications for Consent to the	)	
Transfer of Control of Licenses of	)	
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MediaOne Group, Inc.,	)	CS Docket No. 99-251
Transferor	)	
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To	)	
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AT&T Corp.,	)	
Transferee	)	

DECLARATION OF DOUGLAS D. HOLMES

1. My name is Douglas D. Holmes. I am Executive Vice President – Strategy and Corporate Development for MediaOne Group, Inc. ("MediaOne"). I am responsible for developing strategy for MediaOne and for directing and overseeing the corporate development, including mergers and acquisitions.

2. I am submitting this declaration in support of the pending application for FCC approval of the license transfers associated with the merger of AT&T Corp. ("AT&T") and MediaOne. The purpose of my declaration is twofold. First, I will respond to claims by incumbent local telephone monopolists who oppose the merger that the local telephone competition benefits that motivated the merger (and that are described more fully in the affidavits of my colleague, Nancy McGee, and Professors Janusz

Ordover and Robert Willig) could be achieved as effectively through contractual arrangements between AT&T and MediaOne. Second, I will describe some of the public interest benefits that AT&T and MediaOne expect from the combined entity's larger and more efficient "footprint" -- not just in the telephony arena, but across the whole range of existing and future services that AT&T and MediaOne plan to offer consumers as a competitive alternative to the incumbent LECs, America Online, and other dominant service providers.

3. As noted in Ms. McGee's affidavit, those local telephone customers willing to switch from their incumbent suppliers -- and a significant portion of customers suggested that they would be unwilling to do so -- would be more likely to switch to AT&T or another familiar telephone company than to MediaOne or another cable company. As evidenced by those surveys, and explained further by Ms. McGee, consumer reluctance to entrust local telephone service to a "cable company" has been a significant and persistent obstacle to MediaOne's success in creating meaningful competition to the incumbent LEC.

4. To overcome this obstacle, MediaOne and other cable companies have considered the possibility of seeking a joint venture or other contractual relationship with a telephone company to offer telephone services over cable television facilities. I am aware of discussions dating back more than five years between various cable television companies, AT&T and other telephony providers to negotiate this kind of joint venture. Those discussions have always broken down because the companies involved were unable

to agree on the roles of the venture and the respective partners, as each side tries to define a meaningful and quantifiable role for the venture that makes sense for its own business and strategy.

5. Recent events have only confirmed the difficulty of these kind of negotiations. Last year, MediaOne entered into an agreement with other MSOs to negotiate jointly with AT&T to attempt to reach a mutually acceptable relationship for providing telephone services over the MSOs' hybrid fiber-coaxial facilities. Notwithstanding our recognition that a contractual arrangement -- if it could be formed on workable and mutually agreeable terms -- had the potential to significantly improve MediaOne's ability to compete with incumbent providers, the parties in those negotiations were unable to reach an agreement.

6. To understand why it was so difficult to achieve a joint venture arrangement in the current environment, it is important to focus on the enormous significance of the unprecedented pace and scope of technology and service innovation and convergence in telephony, video, data, online and other services. This convergence makes it increasingly more difficult for the negotiating companies to define their respective roles in the venture. Even with MediaOne's extensive knowledge of the industry, it is very difficult to predict technology and service capabilities and their impacts on consumer demand even a year into the future. The extensive capital outlays required by a telephony joint venture dictate a relatively long contract term that would allow the venture partners to recover their respective investments. In the fluid emerging business environment, with

such a long contract term, it is very difficult to agree in advance how to define and limit the scope of the services and technologies that the joint venture will provide and how to allocate among the partners the value of the opportunities to be developed. Hence, we were not able to reach a telephony joint venture agreement with AT&T.

7. I understand that AT&T and others are continuing to work hard to find ways to minimize the risks associated with these uncertainties and to achieve joint venture arrangements. Such efforts, if successful, would allow the combined AT&T/MediaOne to compete with incumbent LECs in providing mass market local telephone service to consumers nationwide. In the meantime, however, the Merger allows AT&T and MediaOne to avoid these problems altogether and immediately put their complementary assets to work to compete with incumbent LECs more effectively and more quickly than either company could alone.

8. Importantly, however, the benefits that the combined AT&T/MediaOne brings to consumers are not limited to the local telephony arena, but extend well beyond it. The same technology, service advances, and convergence that make a local telephony joint venture so difficult mean that AT&T will increasingly be competing with the incumbent LECs and other dominant service providers across a whole range of voice, video and data services. The combination of AT&T and MediaOne will present consumers with real alternatives and choice in next-generation technologies and services.

9. The major incumbent LECs begin with an enormous advantage. The merger of MediaOne and AT&T will create a much broader ability to use cable facilities to provide local telephony. However, even after the merger, AT&T would still pass significantly fewer households than would be passed by the facilities of Ameritech-SBC-PacBell or Bell Atlantic-NYNEX-GTE. Moreover, for AT&T and MediaOne the number of homes passed translates into far fewer customers. Cable services have much lower penetration rates than telephone services, so even when a cable company passes as many homes as a telephone company, it has far fewer customer relationships. In addition, as new entrants into the telephony market, cable companies start with no customers. Thus, to have a meaningful chance to compete with the incumbent LECs, a cable company needs to have a service footprint that is closer in size and geographic scope to the existing footprints of the large incumbents. Not only do the incumbents have a huge customer base over which to spread their fixed costs, but a lot of the costs are already sunk and financed by captive ratepayers. In contrast, AT&T and MediaOne expect to continue to incur billions to provide competitive services, and begin with almost *no* telephony customers.

10. By allowing AT&T and MediaOne to begin moving toward the scale economies that the incumbent LECs (and AOL) already enjoy, the Merger presents a real chance to bring meaningful competition to these dominant service providers and to prevent them from extending their monopolies to new and future services. Absent the Merger, the entrenched incumbents will be uniquely positioned to exert their dominance in emerging and future communications service areas, with no real challenge to their status

on the horizon. The combined AT&T/MediaOne offers the opportunity to break the incumbent LECs' bottleneck control of local telephone service and safeguard against the otherwise substantial risk that the ILECs will leverage their present control into other new and important services.

VERIFICATION

I, Douglas D. Holmes, declare under penalty of perjury that the foregoing is true and correct. Executed on September 14, 1999.

Douglas D. Holmes

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Applications for Consent to the Transfer	)	
Of Control of Licenses of	)	
	)	CS Docket No. 99-251
MediaOne Group, Inc.,	)	
Transferor	)	
	)	
To	)	
	)	
AT&T Corp.,	)	
	)	
Transferee	)	

DECLARATION OF W. TERRELL WINGFIELD, JR.

1. My name is W. Terrell Wingfield, Jr. I am Senior Vice-President - Telephony Ventures in the Broadband and Internet Services unit of AT&T Corp. ("AT&T"). I am responsible for exploring partnering opportunities with non-AT&T owned and operated cable entities in both local and long distance telephony. My responsibilities include both seeking out and identifying potential joint venture and other similar opportunities, as well as negotiating the contracts to bring those arrangements to fruition.

2. I am submitting this declaration in support of the merger of AT&T and MediaOne Group, Inc. ("MediaOne"). The purpose of my affidavit is, first, to correct two important misrepresentations made in the comments filed in this proceeding and, second, to explain, based on my experience, why it is difficult to achieve joint venture arrangements in the current environment of rapidly changing technologies and service convergence.

3. Contrary to the claims of GTE, AT&T has *not* put its telephony joint venture efforts "on hold" following announcement of the MediaOne merger. AT&T hopes to compete with incumbent monopolists in the provision of mass market local telephone services to consumers across the nation. For reasons that I explain further below, AT&T's preference is to do that through cable facilities that it owns and controls. AT&T recognizes, however, that this will not be an option in all areas. Accordingly, it is pursuing a number of alternative entry strategies. Prominent among these are AT&T's effort to establish joint ventures with unaffiliated cable companies that would allow AT&T to provide local telephony and related services over those cable companies' facilities. Those efforts have been ongoing with numerous cable companies for more than a year and they continue in full force today. Indeed, as I explain in more detail below, AT&T's acquisition of MediaOne and its plans to deploy and market telephony and other services over MediaOne's facilities is an important selling point in attempting to convince unaffiliated cable companies to work with AT&T to overcome the

formidable obstacles to a workable joint venture in this dynamic and constantly evolving marketplace.

4. In addition, it is *not* the case that AT&T has already reached joint venture agreements with Time Warner and Comcast (or any other unaffiliated cable company), despite the best and continuing efforts of myself and my colleagues. After many months of difficult negotiations, AT&T signed a letter of *intent* to form a joint venture with Time Warner in February of this year. The letter of intent had a 90-day "drop dead" date during which the parties were to complete negotiations of the terms of an agreement. That date passed without an agreement being reached. Although the parties continue to negotiate and AT&T sincerely hopes that an agreement can ultimately be reached, a number of difficult issues remain unresolved and there can be no assurance that this will occur. With respect to Comcast, AT&T has signed only what is in effect an option that gives Comcast the right to opt-in to another cable company's agreement when (and if) AT&T succeeds in forming two such joint ventures. AT&T is continuing to negotiate with Comcast, but no conclusion has been reached. Prior to their agreement to merge, AT&T and MediaOne attempted to agree upon such a contractual arrangement, but were unable to do so.

5. That is not to suggest that AT&T will *never* be successful in establishing a joint venture with an unaffiliated cable company – it is my job to do all that I can to assure that AT&T can enter such arrangements on commercially reasonable terms that will allow it, in areas where it does not own facilities, to offer consumers an

alternative to the incumbent local exchange monopolists. But it is important to understand the significant hurdles to obtaining such arrangements.

6. It has been my experience that *any* joint venture that contemplates the provision of services by one party over the facilities of another party will raise difficult issues that are likely to lead to protracted negotiations. For one, issues of service quality and how the party that does not control the facilities can assure that the party controlling the facilities will provide quality service and customer care pose significant challenges. Quality of service and customer care also can be complicated by interoperability concerns, which arise in joint venture arrangements.

7. In the early 1990's I negotiated joint ventures between TCG and unaffiliated cable companies to use the cable companies' fiber facilities to provide local exchange and exchange access services to large business customers. Significantly, those negotiations did not contemplate the sharing of cable coaxial facilities (TCG provided its services over fiber directly to the customer), and they were focussed on business customers, which are not a traditional cable television market. In addition, technology convergence was not the issue it is today. Nevertheless, it took us more than a year and half to reach agreements. That sort of time frame is prohibitive in today's marketplace.

8. The issues are orders of magnitude more complex here, given the great uncertainty over how and when convergence between once separate, but increasingly overlapping, spheres of voice, video and data will occur. Coaxial cable has

a limited bandwidth that, like other transport media, can in the digital world of 0's and 1's and flashes of light carry virtually any voice, video, data or hybrid service. A cable company that is unaffiliated with AT&T is understandably reluctant to enter into a joint venture arrangement in which it has only a partial interest if that arrangement may take business away from its core cable business, which it owns 100%. At the same time, AT&T is properly concerned that contractual limitations that might be imposed on the basis of imperfect information today could have the unintended effect of hampering the ability and flexibility of the joint venture to respond to offerings of the incumbent LECs that may flow from technology or other advances. The emergence of hybrid services such as videophones and IP telephony make the future landscape all the more uncertain.

9. Experience has taught me that there are no easy answers to the question of how to reconcile these concerns. The joint ventures AT&T is seeking are industry-changing arrangements. Although, in my view, AT&T is the company that is best poised to make changes of that scope happen, it is no simple matter. Technology and the marketplace are evolving so rapidly that predicting outcomes even six months into the future is risky. In these circumstances, it should be expected that it will be difficult and time-consuming to hammer out commercial arrangements satisfactory to both parties, particularly given the large initial investments involved. It must also be recognized that the boundaries established for the joint venture in the face of great uncertainty could impose limitations on the flexibility of the joint venture as a competitor that would not be encountered in the context of AT&T-owned facilities.

10. Finally, the ability of AT&T to deploy telephony and other services on a broad scale over its facilities and those being acquired from MediaOne is critical to the success of its joint venture efforts with other unaffiliated cable companies. In this regard, all of the cable companies with which I have had discussions have repeatedly stressed to me the importance of AT&T demonstrating the value of its brand, experience and expertise in providing telephony services over its own cable facilities if they are to be convinced that the risks associated with a joint venture in this dynamic market are worth taking.

VERIFICATION

I, W. Terrell Wingfield, Jr., declare under penalty of perjury that the foregoing is true and correct. Executed on September 14, 1999.

W. Terrell Wingfield, Jr.

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of:	)	CS Docket No. 99-251
Application for Consent to the Transfer of Control of Licenses MediaOne Group, Inc. to AT&T Corp.	)	

DECLARATION OF PROFESSOR JOHN C. COFFEE, JR.

INTRODUCTION

1. I make this declaration to address a question that has been raised in connection with the proposed acquisition by AT&T Corp. ("AT&T") of MediaOne Group, ("MediaOne"): whether AT&T's acquisition of MediaOne would give it the power to control (or otherwise determine the business policies of) Time Warner Entertainment Company, L.P. ("TWE"), a Delaware limited partnership in which MediaOne is a limited partner. This question of what powers and/or rights amount to "control") is a standard issue in corporate, partnership and securities law and one on which I believe I can provide a useful perspective. Although I recognize the state and federal court decisions dealing with this issue are not necessarily dispositive of the questions before the FCC, the issue of what rights and powers limited partners can possess without acquiring control has received particularly careful attention from state legislatures, courts and the drafters of uniform legislation. Their uniform conclusion that limited partners may possess certain approval rights as to major transactions without acquiring control

deserves, I submit, careful consideration by the FCC, because any contrary decision by the FCC would have sweeping implications for the standard structure of limited partnerships as they are frequently used in this industry.

2. Organizationally, this declaration is divided into three sections. In Section I, I discuss my background and competence. In Section II, I analyze the Time Warner Entertainment Company, L.P. Agreement of Limited Partnership (the "ALPA") and the impact of AT&T's acquisition of MediaOne on the rights of MediaOne (or any successor thereto) under the LPA. Section III then analyzes the case law and commentary on the issue of control as it applies to the remaining rights possessed by MediaOne under the LPA and concludes that these rights are fully consistent with traditional "approval rights" of a limited partner and do not indicate any acquisition of control. Section IV summarizes my conclusions. In making this declaration, I am assuming that all the agreements and contracts referenced herein were duly authorized, constitute valid and binding obligations of the parties, and are enforceable according to their terms.

I. BACKGROUND AND QUALIFICATIONS

3. I am the Adolf A. Berle Professor of Law at Columbia University Law School, where I specialize in corporate and securities law. I am a member of the bars of the State of New York and the District of Columbia and have also been admitted to various federal courts. I have a B.A. degree from Amherst College (1966), a law degree (LL.B) from Yale Law School (1969), and a master of laws degree (LL.M) from New York University Law School (1976). Between 1970 and 1976, when I entered law teaching, I was a corporate lawyer with the firm of Cravath, Swaine & Moore in New York City.

4. Since 1976, I have taught law on a full-time basis at a number of American law schools (including Stanford Law School, University of Virginia Law School, University of Michigan Law School, and Georgetown University Law Center), and I have been on the Columbia Law School faculty since 1980.

5. From 1980 to 1993, I served as a Reporter to the American Law Institute in its effort to codify the principles of American corporate governance into a Restatement-like form. *See* The American Law Institute, PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS (Proposed Official Draft 1992). I am also a co-author of the best selling U.S. casebook on securities law (Jennings, Marsh, Coffee and Seligman, SECURITIES REGULATION: CASES AND MATERIALS (8th ed. 1998)), a co-author of a leading corporations casebook (Choper, Coffee, and Gilson, CASES AND MATERIALS ON CORPORATIONS (4th ed. 1995)), and a co-author of a widely used hornbook on corporate finance (Klein and Coffee, BUSINESS ORGANIZATION AND FINANCE (6th ed. 1996)). Other books and articles that I have written or edited on the topic of corporate accountability are listed on my resume, a copy of which is attached hereto as Exhibit A. I have also served as Chairperson of the corporate law section (the Section on Business Associations) of the Association of American Law Schools.

6. Outside of the academic context, I am currently a member of the Legal Advisory Board of the National Association of Securities Dealers ("NASD"), which body advises the NASD and its subsidiary, Nasdaq, on corporate governance matters. I have been a member of the Legal Advisory Committee to the Board of Directors of the New York Stock Exchange (and continue as a emeritus member), a member of the Subcouncil on Capital Markets of the United States Competitiveness Policy Council (which is an independent federal agency),

general counsel to the American Economic Association, and Chairman of the Audit Committee of the Association of American Law Schools (AALS). I have also served terms as a member of the Committee on Securities Regulation, the Committee on Corporate Law, and the Special Committee on Mergers and Acquisitions of the Association of the Bar of the City of New York.

7. On a number of occasions, agencies of the United States Government (including the Antitrust Division of the Department of Justice, various U.S. Attorneys, the FDIC, the RTC, the SEC, and the IRS) have retained me to testify as their expert witness on matters of corporate law in civil and criminal litigation within the United States. On each occasion when my testimony or affidavit was offered, I was found to be qualified to testify as an expert witness on corporate law issues by the state or federal court hearing the case.

II. AT&T'S LEGAL RIGHTS UNDER THE LPA

8. In assessing the legal rights and powers that AT&T will acquire from its acquisition of MediaOne, the logical starting point is the nature of the rights possessed by MediaOne under the LPA and how they will be affected by the acquisition. In overview, MediaOne's rights under the LPA fall into three broad categories: (1) its right to elect three of the six members to the Management Committee, which essentially manages TWE's cable operations, (2) its right to elect two out of the six members on TWE's board, and (iii) its "limited partners" rights to approve certain extraordinary matters and to receive certain information. Each will be separately assessed below.

a. The Management Committee

9. Under Section 12.11(b) of the LPA, a Full Service Network Management Committee (the "Management Committee") is created and given "full discretion and final authority with respect to the business and affairs" of TWE's cable operations. Section 2.11(b)

further makes the "determinations" of the Management Committee "binding" upon TWE and its board . Finally, Section 12.11(b) gives MediaOne (through a predecessor in title) the right to elect three out of six members of this Committee.

10. In my judgment, these rights might well amount to shared control over TWE's cable operations — except for the fact that they will terminate on or before the closing of AT&T's acquisition of MediaOne. This is made clear beyond dispute by Section 12.11(b), which specifies that on a "Change in Control" of MediaOne, its rights to designate representatives "shall automatically terminate" and its previously designated representatives "shall automatically be deemed to have resigned as of such time . . ."

11. Further, even before the closing of the contemplated merger, MediaOne's rights to appoint Management Committee members are terminated under Section 5.5(f) of the LPA, which provides that upon MediaOne's sending of a "Termination Notice" (as defined in that section), the right of its designees on the Management Committee "to participate or vote on any matter before the Management Committee relating to the Affected Partnership Division" can be terminated.

12. In that connection, I have reviewed a letter, dated August 3, 1999, from Pearre A. Williams, Chief Executive Officer of MediaOne Multimedia Ventures, to Richard Parsons, President of TWE, and Richard Bressler, Chairman and chief executive officer of Time Warner Digital, which letter expressly refers to Section 5.5(f) of the LPA and expressly constitutes a Termination Notice. Further, I have reviewed a letter, dated August 4, 1999, from Peter Haje on behalf of TWE to MediaOne, which expressly acknowledges receipt of the Termination Notice and states that:

> "The Partnership hereby exercises its rights, pursuant to Section 5.5 of the Partnership Agreement, to terminate immediately and irrevocably all of the rights of, and all obligations of, the Partnership with respect to MediaOne (and, upon consummation of the AT&T Merger, AT&T) to the fullest extent permitted by Section 5.5."

13. Based upon the foregoing, I must conclude that MediaOne has no further rights with regard to the Management Committee and that AT&T will acquire none.

b. The TWE Board of Representatives

14. Under Section 12.1(a) of the LPA, a Board of Representatives (the "Board") is established and delegated "authority and full discretion with respect to the management of the business and affairs of the Partnership," subject to certain powers given other bodies (such as the Management Committee with respect to cable operations). Section 12.1(b) expressly denies any power to an individual partner (other than the Managing General Partners) "to take any action as a Partner, including, without limitation, acting on behalf of or binding the Partnership, unless such matters shall first have been approved or consented to by the Board . . . ." Hence, the normal authority of individual partners in a partnership is surrendered to the Board.

15. Taken in combination, these provisions might at first glance suggest that MediaOne's two seats on the Board gave it some share in the "control" of TWE. However, a closer look at Section 12.1(b) reveals that this is clearly not the case, because the Board has far less authority than Section 12.1(a) suggests. Under the final sentence of Section 12.1(b), the Managing General Partners (who are affiliates of Time Warner Inc.) are delegated "authority to take any action, without the approval or consent of the Board, if such action has been authorized or approved by, the Voting Class B Representatives and does not require the approval of the Class A Representatives."

16. Section 12.1(c) then makes clear that the authority of the Board is in reality to be exercised by the Voting Class B Representatives, except in certain special instances when approved by the Voting Class A Representative is also required:

> "(c) The Board shall decide by resolution duly adopted by the Class B Representatives by a Majority Vote all matters other than: . . . ."

17. Under Section 12.2(a) of the LPA, Time Warner Inc. ("TWI") and American Television Communications Corporation ("ATC"), an affiliate of TWI, designate the Class B Representatives. Hence, this implies that TWI (in part through ATC) selects the Board for purposes of all decisions other than the limited number of decisions that Section 12.1(c) mandates require approval by Voting Class A Representatives. In reality, MediaOne does not have two seats on the general decision-making body that governs TWE, because that body is really the Voting Class B Representatives on the Board. All that MediaOne possess are its limited approval rights under Section 12.1(c). As discussed below, this is consistent with the traditional position of a limited partner in a limited partnership, who by law cannot participate in the control of the partnership without loss of its limited liability.

18. The special approval rights possessed by MediaOne under Section 12.1(c) of the LPA consist of nine defined transactions, set forth in Section 12.1(c)(i), which require approval of both the Voting Class A Representatives and the Voting Class B Representatives, and, five additional decisions, specified in Section 12.1(c)(ii), which require a unanimous vote of at least one representative designated by each partner. The nine defined transactions essentially cover the following significant changes: (A) a merger of TWE; (B) the sale or transfer of assets constituting more than 10% of the TWE's assets (as defined under various revenue and balance sheet tests); (C) the expansion of TWE into new lines of business; (D) the transfer or sale by

TWE of certain interests in the Partnership; (E) the indemnification of any partner or affiliate for liabilities in excess of $500,000; (F) the incurrence of debt for money borrowed above a defined ratio; (G) the admission of a new general partner; (H) the extension of the Corporate Services Term beyond that contemplated by the LPA; and (I) certain acquisitions above the greater of $750 million or ten percent of TWE's consolidated revenues for its most recent fiscal year. The five "Unanimous Matters" specified in Section 12.1(c)(ii) relate to even more extraordinary decisions: (A) cash distributions above the level provided for in the LPA; (B) the dissolution of TWE; (C) the voluntary bankruptcy of TWE; (D) any amendment or modification of the LPA; and (E) the transfer or sale of certain major interests in TWE or any sub-partnership thereof.

19. In overview, it is abundantly clear that none of these transactions relate to ordinary business transactions or the normal business operations of TWE. Such matters remain entirely in the hands of the Managing General Partners under Section 12.1(b) or the Voting Class B Representatives under Section 12.1(c). Indeed, this point is underscored by Section 12.1(c)(i)(I) which forbids acquisitions in excess of $750 million or ten percent of TWE's consolidated revenues "otherwise than in the ordinary course of business". In short, transactions in the ordinary course of business are not subjected to these special approval rights; rather, MediaOne possesses only a veto power over extraordinary changes in the business and affairs of TWE.

III. THE NORMAL STATUS AND POWERS OF LIMITED PARTNERS

20. The limited partnership is a unique legal entity, which evolved from origins in the Roman law and French civil law. First recognized in the United States by the State of New York in 1822, it was originally strictly regulated, and even minor deviations from the statutory requirements resulted in loss of limited liability, based on the then dominant maxim that statutes in derogation of the common law were to be strictly construed. *See* R. Kurt Wilke,

Limited Partnership Control: A Reexamination of Creditor Reliance, 60 Ind. L.J. 515, 517 (1984). In 1916, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Limited Partnership Act ("ULPA"), which was subsequently adopted in every state except Louisiana. Section 7 of the ULPA, entitled "Limited Partner Not Liable to Creditors," provided that a "limited partner shall not become liable as a general partner unless, n addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business".

21. Control and limited liability were then seen as almost mutually exclusive. Over the years, a number of judicial decisions have interpreted this control test as frustrated creditors have regularly sought to reach limited partners to satisfy their claims. In general, participation in ordinary business decision-making created a high risk of liability for the limited partner. *See,* e.g., Holzman v. De Escamilla, 86 Cal. App. 2d 858, 195 P.2d 833 (1948) (limited partner participated in decisions as to kinds of produce that would be farmed and hence was found liable); Filesi v. United States, 352 F.2d 339 (4th Cir. 1965). But where the limited partners retained only rights to approve major decisions or even select managers, their limited liability was not disturbed. *See,* e.g, Plasteel Products Corp. v. Helman, 271 F.2d 354 (1st Cir. 1959); Trans-Am Builders, Inc. v. Woods Mill, Ltd., 210 S.E.2d 866 (Ga. Ct. App. 1974) (limited partners could participate in refinancing negotiations and raise additional funds for financially troubled firm without sacrificing liability).

22. Extensive analysis of these decisions is not necessary because the ULPA has been repeatedly amended to liberalize the ability of limited partners to exercise approval rights. The Revised Uniform Limited Partnership Act ("RUPLA") was adopted in 1985 and has been substantially enacted by Delaware (the state in which TWE's certificate was filed).

23. Under Section 17- 303(a) ("Liability to third parties") of Delaware's Revised Uniform Limited Partnership Act, which became effective on January 1, 1983, and was amended in 1988, a limited partner is not liable for the obligation of a limited partnership:

> "unless .... in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business."

24. Section 17-303(b) then sets forth a lengthy safe harbor, listing a series of activities in which a limited partner may engage without such conduct being deemed to amount to participation "in control of the business." Put simply, all the activities that MediaOne (or its successor) may engage in after the closing of the acquisition are amply protected by Section 17-303(b). For example, Section 17-303(b)(8) expressly permits limited partners to approve, consent or disapprove the "sale, exchange, lease, mortgage, assignment, pledge or other transfer of ..... any asset or assets of the limited partnership" or the "incurrence ... of indebtedness, of the limited partnership."

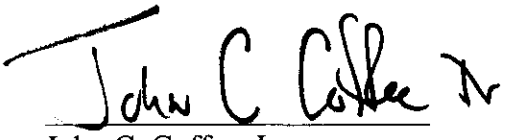
25. Commentators on Delaware law have expressed similar conclusions that the Delaware Revised Uniform Limited Partnership Act intended to broadly protect the exercise of voting rights by limited partners. *See* Craig Smith, Limited Partnerships - Expanded Opportunities Under Delaware's 1988 Revised Uniform Limited Partnership Act, 15 Del. J. Corp. L. 43 (1990). Mr. Smith, a Delaware practitioner, notes that limited partners may vote under Section 17-303(b) (8) on any matters stated in the partnership agreement or in any other agreement or writing without risking liability. Id. at 59-60. He also observes that it has become common for partnership agreements to "restrict the actions of general partners in managing the partnership, frequently confining them to the defined business purposes of the limited partnership." Id. at 60.

26. In short, both Delaware and the Revised Uniform Limited Partnership Act recognize that it is prudent and desirable to permit limited partners to possess some negative veto over significant business transactions and that such approvals or disapprovals do not amount to a participation in control. Indeed, I can think of few legal conclusions that would be less controversial with the business community.

IV. CONCLUSION

27. Viewed either in terms of standard business practice or the legal definition of control under Delaware law or the law of the vast majority of states, AT&T and MediaOne simply do not have the power to control decisions, policies, or practices at TWE, and, indeed, have no involvement in day-to-day management of TWE's cable operations. All they have is the ability to enforce the fundamental terms of a limited partnership agreement that was negotiated well before their appearance on the scene. In my judgment, these rights are not significantly different from those that a lender or other financial institution would normally negotiate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



John C. Coffee, Jr.

Executed on September 15, 1999